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Supreme Court, U.S.
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No. 95-331

In the Supreme Court of the United States

OCTOBER TERM, 1995

SOMNATH SIVASKANDAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether the district court erred in granting the government's motion for summary judgment.

2. Whether the forfeiture of property under 31 U.S.C. 5317(c) (1988 & Supp. V 1993) violated the Due Process and Takings Clauses of the Fifth Amendment based on petitioner's claim of innocent ownership.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. i-vii) is reported at 53 F.3d 108.

JURISDICTION

The judgment of the court of appeals was entered on May 30, 1995. The petition for a writ of certiorari was filed on August 25, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Texas, petitioner's sister, Veena Sivamani Sivaskandan, was convicted of bribery of a government official (18 U.S.C. 201(b)(1)(A)), making a false statement in a matter within the jurisdiction of an agency of the United States (18 U.S.C. 1001), and failing to file a report when transporting more than $10,000 in monetary instruments into the United States (31 U.S.C. 5316). Her offenses arose out of her failure to declare $124,813 in United States currency when entering the United States, and her attempted bribery of a government official. The government subsequently sought civil forfeiture of the $124,813. Petitioner claimed the funds. The district court granted the government's motion for summary judgment. The court of appeals affirmed. Pet. App. i-vii.

1. From May 19, 1993, through July 29, 1993, petitioner's sister, Veena Sivaskandan (Veena), repeatedly offered to pay United States Foreign Service Officer James Waller $130,000 in exchange for the issuance of 30 United States non-immigrant visas. Waller reported the contacts to his supervisor. At a meeting monitored by agents of the State Department's Diplomatic Security Service, Veena was told that she would have to bring the money to Washington, D.C., to complete the transaction. On August 14, 1993, she entered the United States at Houston Intercontinental Airport aboard a Lufthansa flight from Frankfurt, Germany. She told Senior Customs Inspector Douglas Dickens that she was not bringing more than $5,000 in cash or negotiable instruments into the United States and declared that she was

carrying only $500. A search of her bag revealed a small package containing $100 bills concealed in the inside pocket of a suit coat. Upon further examination of her bags, Dickens discovered 12 $10,000 bundles and other currency; the total amount was $124,813. Customs officials detained Veena. Pet. App. ii; C.A. R.E. 25-26. Early the next morning, petitioner came to the customs office and gave a statement to customs officials in which he denied any interest in the currency. Pet. App. iii; C.A. R.E. 27.

2. On April 4, 1994, the government filed a civil action seeking forfeiture of the $124,813. Petitioner, individually and on behalf of his minor daughter, filed a claim for possession of the funds. He asserted that he and his daughter were, through assignment and inheritance, the lawful owners of the currency, and that the funds had been illegally seized. The government moved for summary judgment and adduced evidence showing that there was probable cause to believe that the funds were subject to seizure under 31 U.S.C. 5317(c) (1988 & Supp. V 1993) because Veena had failed to comply with the reporting requirements of 31 U.S.C. 5316(a) before transporting the funds into the United States. Pet. App. ii.[1]

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[1] In pertinent part, Section 5316, which governs reporting on the exporting and importing of monetary instruments, provides that a person who knowingly transports monetary instruments of more than $10,000 at one time into the United States shall file, in a manner prescribed by the Secretary of the Treasury, a report on the money transported. See 31 U.S.C. 5316(a)(1)(B) and (b)(1)-(5). In pertinent part, Section 5317(c) provides for seizure and forfeiture of any monetary instruments for which a report required under Section 5316 is not filed. See 31 U.S.C. 5317(c) (1988 & Supp. V 1993). Unlike certain other forfeiture statutes, *e.g.*, 21 U.S.C. 881(a)(7),

Petitioner responded to the government's motion by claiming that he was the innocent owner of the currency and was unaware of any illegal activity. In support of his "innocent owner" defense, he submitted the will of his deceased father, which disinherited Veena, and an affidavit from his mother, a resident of Bombay, India. The affidavit asserted that Veena had persuaded her mother to give her, under assurance of repayment to petitioner, jewelry and cash that under the terms of the father's will legally belonged to petitioner's daughter. Pet. App. iii; C.A. R.E. 10-13, 16-19.

On October 6, 1994, the district court entered summary judgment for the government. It found that the funds were "in the possession of Veena Sivaskandan for her use, irrespective of the ultimate obligation she may have had to repay her mother or to disburse them to her brother." Pet. App. iv; C.A. R.E. 6. Thus, the district court held, "[t]he cash should be used to pay the fine assessed in [Veena's] parallel criminal action." C.A. R.E. 6

3. Petitioner appealed. Relying, *inter alia*, on *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974), he argued that the district court had erred in granting summary judgment because genuine issues of material fact existed concerning (1) whether petitioner and his daughter were innocent owners of the currency, (2) whether Veena had any ownership rights in the currency, and (3) whether petitioner and his daughter knew of or assisted Veena's effort to bring the funds into the United States without declaring them. See Pet. C.A. Br. 4-5.

Section 5317(c) does not provide for an "innocent owner" defense.

The court of appeals rejected petitioner's contentions. Pet. App. vi-vii. It noted that *Calero-Toledo* had not created a "general 'innocent owner' defense to statutory forfeiture," but had merely observed in dicta that in certain circumstances an innocent owner might be able to raise a constitutional defense to forfeiture, *e.g.*, where the property in question had been taken from the owner without his privity or consent, or where the owner was not only unaware of the underlying criminal activity, but had done everything that could reasonably be expected in order to prevent the use of his property in criminal activity. *Ibid.* (citing 416 U.S. at 687-690). The court of appeals stated that at most the Court in *Calero-Toledo* had recognized a possible "subclass of innocent persons to whom forfeiture provisions could not be applied constitutionally." Pet. App. vii. According to the court, petitioner bore the burden of establishing his membership in that subclass; petitioner, however, had not produced evidence that the money in question had been taken without his privity or consent, or that he had done all that could reasonably be expected to prevent the proscribed use of the property. *Ibid.* Thus, the court of appeals held, petitioner failed to establish the existence of a genuine issue of material fact with respect to his claim of innocent ownership, and the district court did not err in granting the government's motion for summary judgment. *Ibid.*

DISCUSSION

Petitioner makes two related arguments. First, he contends that in granting the government's motion for summary judgment the district court violated

Fed. R. Civ. P. 56(c)[2] and the standards for application of that Rule that were announced by this Court in *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 322 (1986). He argues that the district court erred in granting the government's motion for summary judgment because he had established that he was an "innocent owner" of the seized currency and therefore was entitled to present that claim to a jury. Pet. 10. Second, he argues that because he was "wholly innocent of any wrongdoing," *ibid.*, forfeiture of the seized money violated the Due Process and Takings Clauses of the Fifth Amendment. Pet. 10-13.

Applying the standard set forth in *Calero-Toledo*, the district court properly granted the government's motion for summary judgment, and the court of appeals properly affirmed. In *Calero-Toledo*, the Court stated that

> it would be difficult to reject the constitutional claim of an owner whose property subjected to forfeiture had been taken from him without his privity or consent. Similarly, the same might be said of an owner who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property; for, in that circumstance, it would be difficult to conclude that

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[2] In pertinent part, Rule 56(c) provides that "[t]he judgment sought [on a motion for summary judgment] shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

> forfeiture served legitimate purposes and was not unduly oppressive.

416 U.S. at 689-690 (citations and footnote omitted). Here, both the district court and the Fifth Circuit determined that petitioner failed to produce evidence establishing that the money was taken without privity or consent, or that petitioner had done all that reasonably could be expected to prevent the money from being used for an illicit purpose. The affidavit from petitioner's mother plainly indicates that the money was not stolen, but was freely given to Veena with the understanding that Veena would repay petitioner.[3] Thus, the court of appeals properly held that petitioner did not present evidence creating a material issue of fact to be determined at trial. This straightforward application of the summary judgment standard, see Fed. R. Civ. P. 56(c), does not warrant review by this Court.

The propriety of the district court's grant of summary judgment, however, is also dependent on the resolution of petitioner's second argument, which appears to question the validity of the language from *Calero-Toledo* on which the district court and the court of appeals relied. Petitioner's claim that the forfeiture of his property violates the Due Process and Takings Clauses because he was wholly innocent of wrongdoing raises issues related to those pre-

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[3] The situation described in the affidavit is one in which forfeiture could "have the desirable effect of inducing [owners and bailors of property] to exercise greater care in transferring possession of the[] property." *Calero-Toledo*, 416 U.S. at 688. Thus, the instant case does not fall within *Calero-Toledo's* subclass of cases in which "it would be difficult to conclude that forfeiture served legitimate purposes." *Id.* at 689-690.

sented to this Court in *Bennis* v. *Michigan*, cert. granted, 115 S. Ct. 2272 (1995). *Bennis* presents the question whether the Due Process and Takings Clauses preclude a State from forfeiting a wife's interest in a car that her husband, a co-owner of the car, used in violation of state law, when the wife did not know that he would use it illegally. The decision in *Bennis* could affect the proper disposition of petitioner's Due Process and Takings claims. His petition therefore should be held pending this Court's resolution of *Bennis* and then disposed of accordingly.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's resolution of *Bennis* v. *Michigan*, No. 94-8729, and then disposed of accordingly.

Respectfully submitted.

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